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February 2, 1952
Opinion No. 52-33

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ARIZONA ATTORNEY GENERAL

Mr. Thomas L. Kimball
Director, Arizona Game and Fish Commission
Arizona State Building
Phoenix, Arizona

Dear Mr. Kimball:

This acknowledges receipt of your letter of January 30, 1952 in which you ask the opinion of this office on the following two questions:

- "1. Can the Arizona Game and Fish Commission sign a contract with the federal government which would mortgage the state land in question in the amount of the repayment of the irrigation project cost?
2. Will it be necessary to have the Arizona State Legislature enact a law which would permit the signing of a contract allowing us to pay the project cost for the state land in question?"

The answer to your first question is "no". The problem is resolved by Section 11-107 ACA 1939 as amended in 1951. This section provides:

"11-107. Bringing state lands under reclamation projects and irrigation districts receiving water therefrom--Guarantee and payment of assessments and charges therefor--And reimbursement by lessee or purchaser to state for payment of such assessments and charges.--(a) The (land) commissioner, by and with the approval of the governor, may make contracts for and on behalf of the state with the United States or irrigation districts organized and existing under the laws of the state of Arizona which is served in whole or in part by such federal reclamation project for the inclusion of lands, owned by the state, or belonging to any institution of the state, within

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said project and to agree to pay such of the cost of said project as may become due on account of said lands as follows: (b) The commissioner shall have the authority after said state lands have been included within such project as aforesaid to guarantee the payment of and to pay to the United States or such irrigation district the full amount of district or reclamation assessments or charges against said state lands at any time such assessments or charges become one year delinquent. (c) Before the execution of any lease, permit or certificate of purchase the applicant for such lease, permit or certificate of purchase shall pay to the state land department as reimbursement the full amount of delinquent assessments paid upon such land embraced in said lease, permit or certificate of purchase by the state; provided, however, that in the event of an applicant to lease such reimbursement may be made by such applicant to lease, in the discretion of the commissioner, over a period of not in excess of three (3) years. (d) Nothing in this act shall be construed as creating any lien upon state lands or against the interest of the state therein or as creating any obligation of the state to pay any charges, assessments or debts incurred by any other district other than those described above."

There is no authority vested in the Fish and Game Commission to lease, mortgage or sell any lands belonging to it. All such lands are owned by the State of Arizona and the only authority for leasing or selling, or otherwise conveying or disposing of state lands, rests in the state land commissioner.

The answer to your second question is also "no". It is not necessary to obtain any enabling legislation to authorize payment of the project costs assessed against the land belonging to your commission and situate within the boundaries of the Wellton-Mohawk Irrigation District.

Section 11-107 (a) ACA 1939, Supp. provides for an appropriation of \$50,000.00 for a trust fund out of which to pay the assessments levied against the lands and in which to deposit reimbursements received. If a contract be entered into with the

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federal government in accordance with the provisions of Section 11-107 supra, the assessments levied against the lands would be paid out of the trust fund above mentioned so long as the lands continued to belong to your commission. If the lands or any part thereof be leased or sold as authorized by Section 11-107 supra, the applicant for the lease or certificate of purchase would be required before execution of any such lease or certificate of purchase to reimburse said trust fund.

Sincerely yours,

FRED O. WILSON
Attorney General

PHIL J. MUNCH
Assistant Attorney General

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